52.249-2 Termination for Convenience of the Government (Fixed-Price).

As prescribed in 49.502 (b)(1)(i), insert the following clause:

Termination for Convenience of the Government (Fixed-Price) (Apr 2012)

(a) The Government *may* terminate performance of work under this contract in whole or, from time to time, in part if the *Contracting Officer* determines that a termination is in the Government's interest. The *Contracting Officer shall* terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the *Contracting Officer*, the Contractor *shall* immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the *continued portion of the contract*.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the *Contracting Officer*, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government *shall* have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the *Contracting Officer*, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the *Contracting Officer*, transfer title and deliver to the Government-

(i) The fabricated or unfabricated parts, work in process, completed work, *supplies*, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that *may* be necessary, or that the *Contracting Officer may* direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or *may* acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the *Contracting Officer*, any property of the types referred to in paragraph (b)(6) of this clause; *provided*, however, that the Contractor (i)is not required to extend credit to any purchaser and (ii) *may* acquire the property under the conditions prescribed by, and at prices approved by, the *Contracting Officer*. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under

this contract, credited to the price or cost of the work, or paid in any other manner directed by the *Contracting Officer*.

(c) The Contractor *shall* submit complete *termination inventory* schedules no later than 120 days from the *effective date of termination*, unless extended *in writing* by the *Contracting Officer* upon written request of the Contractor within this 120-*day* period.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal *Acquisition* Regulation, the Contractor *may* submit to the *Contracting Officer* a list, certified as to quantity and quality, of *termination inventory* not previously disposed of, excluding items authorized for disposition by the *Contracting Officer*. The Contractor *may* request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The *Contracting Officer may* verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and *shall* correct the list, as necessary, before final settlement.

(e) After termination, the Contractor *shall* submit a final termination settlement proposal to the *Contracting Officer* in the form and with the certification prescribed by the *Contracting Officer*. The Contractor *shall* submit the proposal promptly, but no later than 1 year from the *effective date of termination*, unless extended *in writing* by the *Contracting Officer* upon written request of the Contractor within this 1-year period. However, if the *Contracting Officer* determines that the facts justify it, a termination settlement proposal *may* be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the *Contracting Officer may* determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and *shall* pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the *Contracting Officer may* agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount *may* include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, *may* not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract *shall* be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause *shall* not limit, restrict, or affect the amount that *may* be agreed upon to be paid under this paragraph.

(g) If the Contractor and the *Contracting Officer* fail to agree on the whole amount to be paid because of the termination of work, the *Contracting Officer shall* pay the Contractor the amounts determined by the *Contracting Officer* as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed *supplies* or services accepted by the Government (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of *freight* and other charges.

(2) The total of-

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to *supplies* or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts

that are properly chargeable to the *terminated portion of the contract* if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the *Contracting Officer* under 49.202 of the Federal *Acquisition* Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the *Contracting Officer shall* allow no profit under this subdivision (g)(2)(iii) and *shall* reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the *termination inventory*.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the *Contracting Officer shall* exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the *Contracting Officer*, for the loss of the Government property.

(i) The cost principles and procedures of part 31 of the Federal *Acquisition* Regulation, in effect on the date of this contract, *shall* govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor *shall* have the right of appeal, under the Disputes clause, from any determination made by the *Contracting Officer* under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there *shall* be deducted-

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any *claim* which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, *supplies*, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor *may* file a proposal with the *Contracting Officer* for an equitable adjustment of the price(s) of the *continued portion of the contract*. The *Contracting Officer shall* make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause *shall* be requested within 90 days from the *effective date of termination* unless extended *in writing* by the *Contracting Officer*.

(m)

(1) The Government *may*, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the *terminated portion of the contract*, if the *Contracting Officer* believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor *shall* repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App.1215(b)(2). Interest *shall* be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest *shall* not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of *termination inventory* until 10 days after the date of the retention or disposition, or a later date determined by the *Contracting Officer* because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor *shall* maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor *shall* make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the *Contracting Officer*, photographs, microphotographs, or other authentic reproductions *may* be maintained instead of original records and documents.

(End of clause)

Alternate I (Sept 1996). If the contract is for *construction*, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) If the Contractor and *Contracting Officer* fail to agree on the whole amount to be paid the Contractor because of the termination of work, the *Contracting Officer shall* pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the *effective date of termination*, the total (without duplication of any items) of-

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the *terminated portion of the contract* if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the *Contracting Officer* under 49.202 of the Federal *Acquisition* Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the *Contracting Officer shall* allow no profit under this subdivision (g)(1)(iii) and *shall* reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the *termination inventory*.

Alternate II (Sept 1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the *Contracting Officer* determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (m)(2) of the basic clause.

Alternate III (Sept 1996). If the contract is for *construction* and with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, substitute the following paragraph (g) for paragraph (g) of the basic clause. Paragraph (m)(2) *may* be deleted from the basic clause if the *Contracting Officer* determines that the requirement to pay interest on excess partial payments is inappropriate.

(g) If the Contractor and *Contracting Officer* fail to agree on the whole amount to be paid the Contractor because of the termination of work, the *Contracting Officer shall* pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the *effective date of termination*, the total (without duplication of any items) of-

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the *terminated portion of the contract* if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the *Contracting Officer* under 49.202 of the Federal *Acquisition* Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the *Contracting Officer shall* allow no profit under this subdivision(iii) and *shall* reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the *termination inventory*.

Parent topic: 52.249 [Reserved]